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THE INTERNATIONAL RIGHT AMERICA MUST CHAMPION

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The question of America's obligation to defend international right raises no less significant an issue than the cause of the war between the United States and Germany and its justifiability. It is a question either of the utmost simplicity or one of almost insoluble complexity, a subject upon which a difference of opinion is hardly conceivable or one upon which agreement becomes almost improbable. While I do not labor under the delusion that many people believe this question to be simple, I know that many people do regard it as relatively easy to decide and that they reach a decision in the light of what I believe to be prejudgments, preconceptions, and even prejudices. Our chief obligation in the study of international right and of the measures necessary to be taken by the United States in its defense is to study it from the point of view of American interests.

Our conclusion, indeed, will be no better than our premises are valid. If the vital element in our supposed judgment be a profound dislike for Germany, an unspoken and unconscious attachment for France, horror over the invasion of Belgium or the sinking of the *Lusitania*, we shall project into the issue of international right the question of the right and wrong of the war itself, of the validity of Pan-Germanism, of Schrecklichkeit. Immediate and positive conclusions we shall produce but conclusions not to be confused with logic, evidence and history. With such impulses, the immense majority in this country seem to me to approach the question of America's obligation to defend international right, and upon such grounds they affirm or deny the justifiability of our entrance into the war. America's obligation to beat Germany, America's obligation to express horror for Belgium and the *Lusitania*, America's obligation to preserve a technical neutrality by exporting no more munitions, America's obligation to compel England as well as Germany to observe international law—none of these proceeds from

a real investigation of America's obligation as the defender of international right. Each and all assume the conclusion as the premise. They prejudice the issue on the basis of other circumstances than those of law, history and diplomacy. I trust that I shall escape the designation of pro-German as the result of these statements. I once wrote a book not too well liked in Germany and have advocated constantly coöperation between the United States and Great Britain, which I hope is already a reality, but I have sought always to advance definite reasons based upon a study of American history, American democracy and American economic interests. We must see the war in the light of American interests, not define American interests in terms of the European struggle, if we are to understand the true significance of our entry into the conflict.

From another point of view a large body of well-intentioned, but I am afraid zealously misdirected people, prejudice the issue. Theoretically the internationalist is a cosmopolite, a citizen of the world at large. In his vocabulary there is no such word as patriotism; for him nationality has no meaning; he is the true man without a country. I will yield to no man in the firmness of my conviction of the blessings of peace and of the horrors of war; I believe strongly that international organization is desirable and that international tribunals and courts can achieve at present valuable results, but I am not yet ready to place peace before patriotism, nor an international court before my devotion to the creed of Washington and of Lincoln, to those intangible impulses which beat within me at the sight of our flag on the docks at Liverpool in August, 1914. America's obligation must be couched for me in terms of patriotism or it has for me no meaning, no obligation. We must attain internationalism and peace through patriotism and nationality and not at their expense.

The question, indeed, of America's obligation as the defender of international right is to me less one of evidence than of logic, less one of immutable facts than of principles. What we mean by international right depends upon our conception of international law which itself must be the logical result of our conception of the international world. That in turn involves our notion of sovereignty and dependency, which can themselves be made concrete and practical only by discoverable tests whereby the reality of sovereignty may be ascertained in particular cases. Our notion of obligation

necessarily depends upon our conception of ethics, of morality, of crowd psychology, upon our opinions regarding the justifiability of war, the necessity of peace, and the character of international organization needed to achieve it. Nor shall we reach any understandable conclusion without delving deep into the relation between individualist ethics and the ethics of nations, without in some way defining ethics itself and its relation to history, diplomacy and law. This question is no hard and fast legal abstraction consisting merely of the application of admitted legal premises to a definite ascertainable set of facts, but an issue whose terms are as yet vehemently discussed and which is itself partly historical, partly diplomatic, partly juristic, partly ethical; an issue as broad as the field of human learning, as deep as the past of the race, as significant as its future.

The true difficulty of the question seems to lie in the disagreement of statesmen, diplomats, historians and lawyers in different nations, and in the same nation, upon the facts which underlie the situation and upon the meaning and validity of its most fundamental postulates. Diplomats and statesmen on the one hand and international lawyers and textbook writers on the other disagree widely upon no less significant and basic conceptions than the character, nature and scope of international law. The former deny that in a proper sense of the words there is any such thing. The latter more vehemently affirm its existence. The definite precepts of such a law naturally emerge from the hands of the two schools in very different condition, while the interpretation and application of the few precepts apparently acceptable to both have caused wide divergence of opinion.

The great powers of Europe apparently admit the existence of a certain international code in theory, but seem to proceed in practice upon a widely different code. International rights are in controversy between the belligerents themselves, and neutrals are not entirely agreed as to what they are. Belligerents disagree with neutrals; some with all neutrals, others with most. Great Britain and France, our new Allies, to say nothing of Germany, dissent from basic propositions upheld by the United States and declare their version to be demonstrable by our own diplomatic practice and from the decision of our own admiralty courts. The controversy, indeed, ranges over so wide a field and the points controverted are so exceedingly

fundamental and the controversy about them is so very general as to demonstrate beyond all peradventure the fact that, if there is any truth about this subject, men are not agreed as to what it is.

The controversialists not unnaturally take widely different views of history and of diplomacy. The American interpretation of rights on the high seas which the President has championed rests quite obviously upon the assumption that the seas were free in time of peace and were free in time of war until the German submarine warfare closed them. The Germans retort that this is the English view, that the freedom of the seas is a fiction and neither exists nor has existed in time of peace nor at any other time. Merely because the British have seen fit to allow most nations to use the seas with considerable freedom does not in the least demonstrate that those nations possess privileges guaranteed by international law. They receive them from Great Britain and do not retain them longer than Great Britain is willing to concede them. The facts of the war prove to the Germans that the British themselves closed the seas, that their action was unwarrantable, and that the Germans are protesting against it as much in our interest as in their own. It will be obvious that the question of fact whether or not the seas were free at any time is vital to a decision as to their present condition and the responsibility of Germany in regard to it, and to the obligation of the United States as a defender of international right. The issue here is not one of law but one of history and comprehends not merely the history of the last three years but of the last three centuries.

But we shall be blind if we deny that what men believe to be facts is as potent as the truth itself in governing men's actions. The popular attitude and decision upon these great issues is one of vital consequence which must not be forgotten in an inquiry of this sort. Part of our task is to learn whether or not the popular decision proceeds from sentiment, prejudice, preconception, or self-interest. We must seek to understand it because it may not be within our power to control it. It seems to be true that the popular mind in the United States accepts practically without hesitation or reservation the international law espoused by the more radical theorists as a law of superior obligation which no nation may break without incurring a penalty which the nation injured has a right to exact and which is expressly sanctioned by the law itself. While sovereignty is in the popular mind a vague conception, there is no real hesitancy

in admitting that Great Britain, Turkey and Denmark are all sovereign nations, all equally sovereign, entitled to equal rights under the international code. There is again a general feeling that the defense of weak and small nations must be led by the United States at all costs, because we are better situated to defend the integrity of international law than are the nations of Europe. Of our power to achieve something of moment if we choose, the popular mind has not the slightest doubt. It thinks of the United States today apparently as the world's money power and, therefore, indispensable and all important, as the world's chief industrial nation, as the world's richest nation. Our invulnerability, our military prowess, our naval power, the public accepts as beyond dispute.

This view of the situation does not seem to me sustained by the more conservative and accurate study of history, diplomacy and jurisprudence, if the men whose reputations as scholars were great before the war broke out are to be depended upon as authorities. It seems to me further to be widely at variance with what the great powers of Europe find practicable to observe or possible to concede. These seem to consider the international community to be composed, not of some fifty odd nations, but of the six European powers and Japan, who are not themselves sovereign but very nearly so. The other so called nations are either actually sovereign like the United States and the South American countries, but not integral parts of the international fabric, or they are semi-dependent and dependent nations which are ruled by the great powers in conference. International law as observed and practiced consists of the privileges which the six European powers mutually extend each other and of the obligations which they recognize as binding between themselves, and, in addition, of all such privileges and immunities as they voluntarily extend the other nations and of the practices and concessions which they exact from them. It is above all a voluntary code, exceedingly flexible, brief, practical, and not in the least regarded as a law of superior obligation so far as the six powers are concerned. It is obligatory definitely enough upon the semi-dependent and dependent states.

This international system furthermore is primarily a law of peace in the sense of a law binding so long as the six powers are at peace with each other. A war between them suspends its operation and brings into prominence a very different set of privileges and obli-

gations, much more elastic, much less charitable. The great powers definitely maintain that the circumstances of war do alter international relationships, obligations, duties, rights and privileges for all members of the international community, whether belligerents or not. The practical basis of this conception lies in the difficulty and practical impossibility of assuring each other in time of war the courtesies and concessions common during peace, and of insuring neutral nations in practice the privileges which the powers are entirely willing to yield them in time of peace. Privileges in international law are treated by the great powers at all times not as questions of right or of law but as questions of feasibility and expediency.

We must as scholars be clear upon the point that if we have gone to war with Germany to achieve recognition of certain technical rights at sea, of certain technical rules about visit and search, to obtain certain guarantees for the protection of American lives on the high seas, or even to maintain a certain view of international law which has continually found expression in our diplomatic papers, we have gone to the assistance of powers who decline quite as firmly as Germany to accept these general principles and their specific application to their own relations with the United States. We shall be apparently accepting the system itself and be losing what we are fighting to win. Let us as scholars again acknowledge what most European diplomats believe to be true.

The result of this system is to define America's rights and America's obligations in the terms of European interests, and to place the decision in the hands of the six European powers acting in concert. We have in practice enjoyed such privileges as they have voluntarily yielded us. We have, with objections more or less violent and with protestations more or less loud, been compelled to accept their version of our obligations toward them. Some points they have not felt it worth while to insist upon, others they have demanded and secured. Some concessions we have felt worth war, but we have usually failed to make our point. Nevertheless in time of peace we have had little to complain of. They have sought to be magnanimous; they have even succeeded in being generous. The Monroe Doctrine they have never explicitly challenged and its general spirit they have voluntarily observed, though we have never at any time been in a position to compel its observance. Specific rights at sea, such as are at present in question, we have

commonly enjoyed though we have never been in a position to exact them. Our specific difficulties are merely the concrete evidence of the fact that we are not represented effectively in the councils in which the real decisions are made and that we are not yet sufficiently indispensable as an economic factor of the world, not even with all the changes the war has produced, to make concessions vital to us vital for them to grant.

If we entered the war against Germany purely on technical grounds, we have stultified ourselves. But we did nothing of the kind. We entered the war to change the system itself which has produced the technicalities and disabilities from which we have suffered. We have entered the war against the power which proposes to continue the old order, the old logic, the old ethics and the old diplomacy, and we have joined hands with those powers who have striven in arms for three years to create a new international order based not upon autocracy but upon democracy, upon the rule of armies and of diplomats by the people instead of by kings. We have entered the war in a fight for principles not for technicalities or details.

The international right America must champion is the right to be consulted, the right to be considered in deciding the basic and fundamental elements in the international problem, the right to insist that the international horizon shall be so broadened as to include not only the affairs of Europe but those of America, Africa and Asia. We are insisting that the definition of international right shall be international in scope and international in purpose; that it shall attempt to advance the interests of all nations so far as is mutually advantageous. It will define international interests in general in terms not exclusively European, nor governed by considerations based upon the European balance of power and the exigencies of European national policies. The principle itself is the vital thing; that the United States is a necessary element of the international community to be consulted in all affairs of significance. This fact we must maintain and this fact we must defend.

The immediate obligation of the United States then is to achieve something practical, effective, immediate toward securing some admission by the great powers that the affairs of the world will no longer be decided primarily on the basis of European politics. But we shall be entirely unwise to insist upon the recognition of this

principle in any particular way or upon the formation of any particular type of new international organization to replace the old. To achieve the theoretical end at least of the present system, to unmask it and show it in all the nakedness of its fictitious internationalism will be an achievement of extraordinary moment. With that, at present, the United States may well rest satisfied. To insist that the six great powers shall abdicate in some formal way is to demand that they humiliate themselves, recognize publicly that they have been living in sin; publicly impose a stain upon their honor. To expect again to secure the recognition by the great powers of the equality of all the apparently independent states of the present world is to ask a change so sweeping that it has no chance of acceptance, to sacrifice a great scheme by attaching impossible conditions. What kind of an international council is created after the war, what type of court, how much of the theorists' code of international law will be conceded to be of practical application, are all matters of relative indifference. We should be more than satisfied with the explicit pledge of a new order given by the British Premier at the American luncheon in London on April 12, 1917.

I also say that I can see more in the knowledge that America is going to win a right to be at the conference table when the terms of peace are discussed. That conference will settle the destiny of nations and the course of human life for God knows how many ages. It would have been a tragedy, a tragedy for mankind, if America had not been there and there with all her influence and her power.¹

But it is essential that the foundations of the new order should be laid in democracy and the rule of the people, in humanity, justice and right, as those great words have been understood by centuries of Christians. For the cause of the German people there is much to be said; their difficulties and troubles during the régime of the old diplomacy were certainly many and grievous. But the United States cannot admit that the international balance can today be adjusted by the continuation of the old disregard of morality and of law or accept the dictum that patriotism justifies brutal and inhuman acts and policies. A certain clearing of the ground upon which the new order is to be built has become essential. Autocracy, secret diplomacy, Schrecklichkeit, cumber the new site and must be removed. To assist in that task we are now pledged that the work of America in the defense of international right may be effective and

¹ Lloyd George, April 12, 1917.

permanent. For the future, for our posterity, for that greater majority of Americans yet to be born, scarcely any work could be more essential, more glorious.

But the only effective guarantee of a new order will be the prompt, efficient, decisive participation of the United States in the world conflict. We are now to demonstrate our equality, to prove our title to consideration as a sovereign among sovereigns. International status, as the great powers have observed it, has depended primarily on the ability of a nation to cast a decisive influence into the international scale. That we would some day be capable of far-reaching influence was appreciated in 1823; but that the new world is now able to redress the balance of the old has not yet been conceded in Europe. In Germany they sneer and dare us to do our worst, confident in the tradition of our unpreparedness, isolation, impotence; in Great Britain and France, they believe and trust and hope but with the fear that perhaps as yet we may not be able to demonstrate that we are capable of that type of sustained organized effort expected of first-class powers. Upon our decisive influence, upon the war itself depends our international status in the immediate future; upon the demonstration of our equality of status depends the creation of a new international order truly international and non-European, for the new state must contain at least one non-European power whose efficiency and power is beyond dispute equal to that of any of the older powers—the United States must achieve that the new internationalism may be realized.

What then becomes the bounden duty of the United States in the defense of international right? The prompt and successful prosecution of the war, efficient and decisive aid to the Allies, achieved by a great army based upon universal service, by a new merchant marine of small wooden ships, by an extension of the munitions industry, by the mobilization of our agricultural and industrial resources. America's defense of international right is no longer an academic question of law, history and diplomacy. The days of the diplomat are past, the day of the soldier, of the sailor, of the skilled machinist, of the farmer has come. We have followed the counsel of Washington. We have raised a standard to which the wise and honest can repair.